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OCT 14 2003

THE STATE BAR COURT STATE BAR COURT CLERK'S OFFICE  
HEARING DEPARTMENT - SAN FRANCISCO SAN FRANCISCO

In the Matter of  
**THOMAS J. DIXON,**  
Member No. 146405,  
A Member of the State Bar.

Case No. 02-O-13525-PEM;  
02-O-14490-PEM (Cons.)

**Decision and Order of Involuntary  
Inactive Enrollment**

**1. Introduction**

In these two consolidated default matters, Respondent **Thomas J. Dixon** is charged with misconduct in two client matters. The court finds, by clear and convincing evidence, that Respondent failed to perform services competently, failed to communicate, engaged in the unauthorized practice of law, and failed to cooperate with the State Bar.

In view of Respondent's misconduct and three prior records of discipline within the past ten years, the court recommends that Respondent be disbarred.

**2. Pertinent Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) in two separate matters, case No. 02-O-13525 on April 1, 2003, and case No. 02-O-14490 on April 7, 2003. (Rules Proc. of State Bar, rule 60.) The NDCs were not returned as undeliverable. Respondent did not file a response to the NDCs. (Rules Proc. of State Bar, rule 103.)

In May 2003, Respondent participated in two status conferences. The court told Respondent that he needed to file his response to the NDCs. But he failed to do so. The two matters were consolidated on May 29, 2003.



1 On State Bar's motion, Respondent's default was entered and he was enrolled as an inactive  
2 member on June 30, 2003, under Business and Professions Code section 6007(e).<sup>1</sup> An order of entry  
3 of default was sent to Respondent's official membership records address but was returned as  
4 unclaimed.

5 Respondent did not otherwise participate in the disciplinary proceedings. The court took  
6 these matters under submission on July 16, 2003, following the filing of the State Bar's brief.

### 7 **3. Findings of Fact and Conclusions of Law**

8 All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default  
9 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
10 200(d)(1)(A).)

#### 11 **A. Jurisdiction**

12 Respondent was admitted to the practice of law in California on June 13, 1990, and has since  
13 been a member of the State Bar of California.

#### 14 **B. Case No. 02-O-14490 (The Lowell Matter and the Unauthorized Practice of Law)**

##### 15 **1. Inactive Enrollment in Case No. 00-O-14630 from April 25 to May 24, 2002**

16 On April 22, 2002, the State Bar Court ordered Respondent to be placed on involuntary  
17 inactive enrollment, effective April 25, 2002, as a result of his default in State Bar Court case No.  
18 00-O-14630. (Bus. & Prof. Code, § 6007(e).) He was retransferred to active status on May 24,  
19 2002. Therefore, Respondent was not entitled to practice law between April 25 and May 24, 2002.

20 Although Respondent received the notice of disciplinary charges in that case and agreed to  
21 meet with Deputy Trial Counsel Mark Hartman of the State Bar on April 19, 2002, he neither filed  
22 a response nor attended the meeting.

23 On April 29, 2002, Hartman spoke with Respondent and advised him of his default entry,  
24 of his inactive enrollment, and of his non-entitlement to practice law. When Respondent told  
25 Hartman that he was in the middle of a trial, Hartman advised Respondent (1) that he must inform  
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27 <sup>1</sup>All references to section (§) are to the Business and Professions Code, unless otherwise  
28 indicated.

1 his client, the judge, and the opposing party of his inactive enrollment and (2) that he must make  
2 sure not to practice law until he was entitled to do so. Hartman faxed him a confirmation memo,  
3 which Respondent received.

4 **2. Court Appearance in the Lowell Matter**

5 Nevertheless, on April 30, 2002, Respondent appeared in Yolo County Superior Court to  
6 represent a criminal defendant, Burnam Lowell, in case No. CR F 00-0682. He did not inform the  
7 court that he had been enrolled as an inactive member of the State Bar.

8 The court continued the case to the next day for Lowell's arraignment on an amended  
9 information. At the arraignment, Respondent again appeared in Yolo County Superior Court on  
10 behalf of Lowell. And again, he did not inform the court that he had been placed on inactive status.

11 On October 17 and November 20, 2002, the State Bar wrote to Respondent, inquiring about  
12 his April 30 and May 1 court appearances in the Lowell matter and requesting a written response.  
13 The letters were properly sent to Respondent at his official address and were not returned as  
14 undeliverable or for any other reason.

15 Respondent did not respond to the two letters or communicate with the State Bar.

16 ***Count 1: Business and Professions Code Sections 6068(a), 6125 and 6126 (Unauthorized***  
17 ***Practice of Law)***

18 Section 6068(a) provides that an attorney has a duty to support the laws of the United States  
19 and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney  
20 and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an  
21 active attorney.

22 The State Bar had repeatedly advised Respondent that because he had been enrolled as an  
23 inactive member, he was not entitled to practice law. The fact that he was in the middle of a trial  
24 did not excuse his obligation to inform the court about his ineligibility to practice. Had he appeared  
25 in court and told the court about his inactive status, this would not have constituted the practice of  
26 law. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77.)

27 Thus, by clear and convincing evidence, Respondent wilfully violated sections 6068(a), 6125  
28 and 6126 when he knew or should have known that he was not entitled to practice law, held himself

1 out as entitled to practice law before the Yolo County Superior Court and actually practiced law by  
2 appearing twice at Lowell's arraignment.

3 ***Count 2: Section 6106 (Moral Turpitude)***

4 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
5 dishonesty or corruption. By holding himself out as entitling to practice law and actually practicing  
6 law when he was on inactive enrollment and by concealing from the Yolo County Superior Court  
7 on April 30 and May 1, 2002, the material fact that he had been enrolled as an inactive member of  
8 the State Bar, Respondent committed acts of moral turpitude and dishonesty in wilful violation of  
9 section 6106. (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

10 ***Count 3: Section 6068(i) (Failure to Cooperate With the State Bar)***

11 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary  
12 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's  
13 letters or participate in the investigation of his unauthorized court appearances in the Lowell matter,  
14 Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

15 **C. Case No. 02-O-13525 (The Elmore Matter)**

16 On December 11, 2001, Tony Elmore hired Respondent to represent him in a criminal matter  
17 in Sacramento County Superior Court. Respondent told his client that he would not have to appear  
18 in court unless Respondent advised him otherwise.

19 On April 10, 2002, the Sacramento County Superior Court scheduled a trial in the Elmore  
20 case for May 21, 2002. As discussed above, from April 25 until May 24, 2002, Respondent was not  
21 entitled to practice law in California.

22 Before the scheduled trial, Respondent asked another attorney, Kenneth Smith, to cover for  
23 him and to ask for a continuance.

24 On May 21, attorney Smith appeared in place of Respondent for Elmore before the  
25 Sacramento County Superior Court and requested a continuance. The court granted Smith's request  
26 and scheduled a trial in the Elmore case for May 29, 2002. Smith informed Respondent of the new  
27 trial date.

28 But Respondent did not appear at or arrange a substituting attorney to attend the Elmore trial

1 on May 29, 2002. He also did not give advance notice or inform Elmore about the trial.  
2 Consequently, Elmore did not know about and did not attend the trial on May 29.

3 On the same day, the Sacramento County Superior Court issued a bench warrant for  
4 Elmore's arrest. Respondent did not inform Elmore about the bench warrant.

5 On October 10 and November 18, 2002, the State Bar wrote to Respondent, inquiring about  
6 the Elmore matter and requesting a written response. The letters were properly sent to Respondent  
7 at his official address. Both letters were not returned as undeliverable or for any other reason.  
8 Respondent did not respond to the letters or communicate with the State Bar.

9 ***Count 1: Rule 3-110(A) of the Rules of Professional Conduct<sup>2</sup> (Failure to Perform)***

10 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail  
11 to perform legal services with competence. Respondent was retransferred to active status on May  
12 24, 2002. By failing to appear at Elmore's criminal trial on May 29, Respondent recklessly failed  
13 to competently perform services in wilful violation of rule 3-110(A).

14 ***Count 2: Section 6068(m) (Failure to Communicate)***

15 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of  
16 clients and to keep clients reasonably informed of significant developments in matters with regard  
17 to which the attorney has agreed to provide legal services. By failing to inform Elmore about the  
18 May 29 trial and the bench warrant for his arrest, Respondent failed to keep his client reasonably  
19 informed of significant developments in a matter with regard to which he had agreed to provide legal  
20 services in wilful violation of section 6068(m).

21 ***Count 3: Section 6068(i) (Failure to Cooperate With the State Bar)***

22 By failing to respond to the State Bar's letters or participate in the investigation of the  
23 Elmore matter, Respondent failed to cooperate with the State Bar in wilful violation of section  
24 6068(i).

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28 <sup>2</sup>References to rules are to the current Rules of Professional Conduct, unless otherwise noted.

#### 4. Mitigating and Aggravating Circumstances

##### A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

##### B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has three prior records of discipline. (Std. 1.2(b)(i).)

1. Respondent stipulated to a two year stayed suspension, two year probation and one year actual suspension and restitution for mishandling his client trust account and for his misconduct involving four clients which began in 1992, including failure to perform services, failure to return unearned fees, commingling, misappropriation, and failure to promptly pay client funds. (Supreme Court case No. S049036 filed November 29, 1995; State Bar Court case No. 92-O-18982; 93-O-10385; 93-O-12216; 93-O-17257; 94-O-13467; 95-O-12181 (Cons.).)
2. Respondent stipulated to extending his probation one year for failing to timely comply with rule 955 of the California Rules of Court as ordered in his first prior disciplinary case. (Supreme Court case No. S049036, filed October 18, 1996; State Bar Court case No. 96-N-00817.)
3. Respondent stipulated to a stayed suspension of three years and probation of three years with a one year actual suspension for his misconduct involving three clients, including failure to perform services, failure to return unearned fees, failure to communicate with his client, improper withdrawal from employment, and violation of court orders. (Supreme Court case No. S112940 filed April 3, 2003; State Bar Court case No. 00-O-14630; 01-O-05181; 02-O-11314.)

Respondent committed multiple acts of wrongdoing, including failing to perform services, failing to communicate and engaging in the unauthorized practice of law. (Std. 1.2(b)(ii).)

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<sup>3</sup>All further references to standards are to this source.

Respondent significantly harmed his clients and the administration of justice by failing to inform the court of his inactive status and failing to appear at his client's criminal trial, which resulted in the issuance of a bench warrant for Elmore's arrest. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Instead of rectifying his misconduct and admitting that he was not entitled to practice law before the court, Respondent appeared twice at Lowell's arraignment when he knew he was not authorized to practice.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## 5. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

The standards for Respondent's misconduct provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Std. 1.6, 2.3, 2.4(b), and 2.6.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has three prior records of discipline and no mitigation.

The State Bar urges disbarment, citing *In the Matter of Hunter, supra*, 3 Cal. State Bar Ct. Rptr. 63.

Respondent apparently has not learned from his past misconduct or discipline. As the State Bar noted that after Respondent's admission in 1990, his misconduct began in 1992 and has not stopped since.

Although he had participated in his past three disciplinary cases, Respondent failed to appear and participate in this hearing. Such failure to participate leaves the court without information about

1 the underlying cause of Respondent's offense or of any mitigating circumstances surrounding his  
2 misconduct.

3 In recommending discipline, the "paramount concern is protection of the public, the courts  
4 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

5 In view of his three prior records of discipline, Respondent has repeatedly committed acts  
6 of client abandonments, violation of court orders, and other misconduct from 1992 to the present.  
7 Therefore, in consideration of the egregious misconduct, the serious aggravating circumstances and  
8 the lack of mitigating factors, the court recommends disbarment to protect the public and the  
9 integrity of the legal profession.

### 10 **6. Recommended Discipline**

11 ACCORDINGLY, the court hereby recommends that Respondent **Thomas J. Dixon** be  
12 disbarred from the practice of law in the State of California and that his name be stricken from the  
13 rolls of attorneys in this State.

14 It is also recommended that the Supreme Court order Respondent to comply with rule 955,  
15 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the  
16 effective date of its order imposing discipline in this matter.

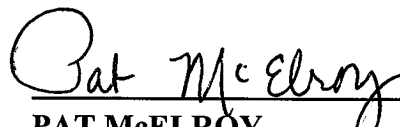
### 17 **7. Costs**

18 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10  
19 and payable in accordance with section 6140.7.

### 20 **8. Order of Involuntary Inactive Enrollment**

21 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant  
22 to section 6007(c)(4) and rule 220(c) of the Rules of Procedure of the State Bar. The inactive  
23 enrollment shall become effective three days after service of this order.

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25  
26 Dated: October 14, 2003

27   
28 **PAT McELROY**  
Judge of the State Bar Court



## **CERTIFICATE OF SERVICE**

**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 14, 2003, I deposited a true copy of the following document(s):

### **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

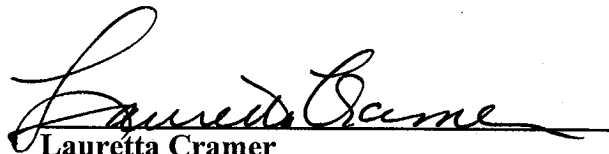
- [X]** by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**THOMAS J. DIXON  
716 10TH ST #200  
SACRAMENTO CA 95814**

- [X]** by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**ESTHER ROGERS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **October 14, 2003.**



**Lauretta Cramer**  
Case Administrator  
State Bar Court